



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,716	03/19/2004	Rick H. Troeger	2060/89	7535

7590

06/14/2005

W. Scott Carson, Esq.
Dorr, Carson, Sloan, Birney & Kramer, P.C.
3010 East 6th Avenue
Denver, CO 80206

EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,716

Applicant(s)

TROEGER ET AL.

Examiner

Hilary Gutman

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-8, 20, 30, 31, 34 and 39-47 is/are rejected.
- 7) ☒ Claim(s) 1-4, 9-19, 21-29, 32, 33, 35-38 and 48 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/11/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the signal of claim 44 wherein the detent creates the signal when received in the recessed portion must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:

On page 9, line 20, "portion" should be "side legs".

On page 10, line 17, "Figure 7" should be "Figure 8".

On page 17, lines 19, 21, and 26, "clamp" should be "clamping" for consistency.

Appropriate correction is required.

3. The abstract of the disclosure is objected to because on line 1, "a vehicle. The top" should be "a vehicle". Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claims 1-4, 9-19, 21-29, 37-38, 40- 48 are objected to because of the following informalities:

In claim 1, line 14, "the" should be inserted before "longitudinal".

In claim 12, line 5, "said" should be inserted before "side leg".

In claim 14, line 5, "section" should be inserted after "header".

In claim 18, line 4, "a position" should be "a covering position". In line 6, "a position" should be "an uncovering position".

In claim 24, line 22, "said" should be inserted before "side leg".

In claim 27, line 4, "one leg" should be "one said upstanding leg". On line 6, "the end portion" should be "an end portion" since it appears to be the first occurrence where this feature is recited.

In claim 28, line 3, "upstanding" should be inserted after "said one".

In claim 34, line 12, "section" should be inserted after "header".

In claim 37, line 4, "a position" should be "a covering position". In line 6, "a position" should be "an uncovering position".

In claim 40, line 27, "locking" should be inserted before "mechanism".

In claim 45, line 4, "a position" should be "a covering position". In line 6, "a position" should be "an uncovering position".

In claim 48, line 13, "the" should be inserted before "longitudinal axis".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 5-8, 20, and 40-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the sections" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the sections" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "said aligned relationship" in lines 7-8. There is insufficient antecedent basis for this limitation in the claim.

Claim 40 recites the limitation "said aligned relationship" in line 29. There is insufficient antecedent basis for this limitation in the claim.

The recitations in claim 44 are unclear as to what the applicant intends to recite. Specifically, no signal was previously disclosed in the specification or the drawing figures.

Claim 45 recites the limitations "the second pivotal axis " in lines 4 and 7, "said aligned relationship" in line 6, and "the second axis" in line 8. There is insufficient antecedent basis for these limitations in the claim.

Claim 46 recites the limitation "an axis" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 47 recites the limitation "a first axis" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 30-31, 34, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicastri.

Nicastri (6,431,635) discloses a convertible soft top 10 for a vehicle, the vehicle having a body with front and rear portions spaced from each other along a longitudinal axis, said front portion having an upstanding windshield (Figure 1) and said rear portion having side panels and a rearward panel, said convertible soft top including: a foldable, collapsible frame 16 and a flexible fabric 10 attached thereto, said frame including at least a front bow member 18, 20 having an inverted, substantially U-shape with side legs 18, 20 and a base (forward-most 22,

Art Unit: 3612

Figure 1) extending substantially horizontally between the side legs, the side legs of the front bow member being mounted for pivotal movement relative to said vehicle about a first axis between a collapsed position with the base thereof adjacent the rearward panel and a raised position with said base adjacent the windshield of the front portion of the vehicle body, and the base of the inverted U-shape of the front bow member including a header section 12, 22 and at least one clamp assembly 24, 26 pivotally mounted to said header section and releasably securable to the windshield (not numbered), said pivotally mounted clamp assembly further being releasably securable to said header section in a fixed position relative thereto.

With regard to claim 31, each of the respective side legs of the front bow member in said raised position has a section 40, 44, 46 extending substantially horizontally and each section has first and second segments 40, 44, said first segment being mounted to the base of the front bow member and being attached to the second segment of the respective side leg for pivotal movement about a second axis, said base being selectively pivotable about said second pivotal axis between a closed position (Figure 1) with the base of the front bow member substantially adjacent the windshield and an open position (Figure 3) with said base spaced from said windshield and adjacent the second segments of the side legs to create an open portion in said soft top adjacent the windshield, said clamp assembly being selectively securable to said windshield with said base in said closed position and to the header section of said base with said base in said open position.

For claim 34, Nicastri (6,431,635) discloses a soft top 10 for a vehicle, the vehicle having a body with front and rear portions spaced from each other along a longitudinal axis, said front portion having an upstanding windshield, said soft top including: a frame 16 and a flexible fabric

Art Unit: 3612

attached thereto, said frame including at least a front bow member 18, 20, 22 with side legs and a base (forward-most 22, Figure 1) extending substantially horizontally between the side legs and the base of the front bow member including a header section 12 and at least one clamp assembly 24, 26 pivotally mounted to said header and releasably securable to the windshield, said pivotally mounted clamp assembly further being releasably securable to said header section in a fixed position relative thereto wherein each of the respective side legs of the front bow member has a section 40, 44, 46 extending substantially horizontally and each section has first and second segments 40, 44, said first segment being mounted to the base of the front bow member and being attached to the second segment of the respective side leg for pivotal movement about a second axis, said base being selectively pivotable about said second pivotal axis between a closed position (Figure 1) with the base of the front bow member substantially adjacent the windshield and an open position (Figure 3) with said base spaced from said windshield and adjacent the second segments of the side legs to create an open portion in said soft top adjacent the windshield, said clamp assembly 24, 26 being selectively securable to said windshield with said base in said closed position and to the header section of said base with said base in said open position.

With regard to claim 39, the rear portion of said vehicle body has side panels and a rearward panel and the side legs of the front bow member are mounted for pivotal movement relative to said vehicle about a first axis between a collapsed position with the base thereof adjacent the rearward panel and a raised position with said base adjacent the windshield of the front portion of the vehicle body.

Allowable Subject Matter

9. Claims 1-4, 9-19, 21-29, and 48 are objected to as containing a minor informality or being dependent upon an objected base claim, but would be allowable if rewritten to overcome these informalities.

10. Claims 32-33 and 35-38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 40-47 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

12. Claims 5-8 and 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 571-272-6662.

Art Unit: 3612

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

15. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

or faxed to:

(703) 872-9326, (for formal communications intended for entry)

or:

(703) 746-3515, (for informal or draft communications, please clearly label



"PROPOSED" or "DRAFT").

Hilary Gutman
June 7, 2005